

July 7, 2005

Jeffrey G. Scott
General Counsel
Law Offices
16935 West Bernardo Drive, Suite 170
San Diego, CA 92127

Re: Your Request for Informal Assistance
Our File No. I-05-107

Dear Mr. Scott:

This letter is in response to your request on behalf of Director Tim Shell, for advice regarding conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Since your inquiry is general in nature, we are treating your request as one for informal assistance.² (Regulation 18329(b)(8)(D))

QUESTIONS

1. May Mr. Shell participate in decisions as a member of the Vallecitos Water District board of directors where the district serves part of the City of Vista and Mr. Shell is an employee of the City of Vista?
2. May Mr. Shell participate in decisions as a member of the Vallecitos Water District board of directors involving payments to the Buena Sanitation District under agreements based on their membership in a Joint Powers Authority, where the Vista City Council acts as Buena's board?

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

² Informal assistance does not confer the immunity provided by a Commission opinion or formal written advice. (Regulation 18329(c)(3), copy enclosed.)

CONCLUSIONS

1 and 2. Mr. Shell generally may make decisions as a member of the board of directors of the Vallecitos Water District, except where such decisions would affect his promotions with the City of Vista, or personnel moves involving his immediate family.

FACTS

The Water District is organized under the provisions of the California Water Code section 30000 et seq., and provides water and sewer services to residents located in portions of the cities of San Marcos, Carlsbad, Escondido, Vista and unincorporated areas of northern San Diego County. Mr. Tim Shell is a member of the Board of Directors of the Water District.

One of the neighboring agencies with whom the Water District has contractual relationships is the Buena Sanitation District ("Buena"). Buena provides sewer service to portions of the City of Vista. Both the Water District and Buena are members of the Encina Wastewater Authority, which is a regional joint powers authority that treats wastewater for a number of special districts and cities in northern San Diego County. The Vista City Council acts as the Board of Directors of Buena and is responsible for approving all agreements and other actions between Buena and the Water District. Director Shell is an engineer and employee for the City of Vista.

ANALYSIS

STEPS 1 & 2: IS MR. SHELL A PUBLIC OFFICIAL MAKING, PARTICIPATING IN MAKING OR INFLUENCING A GOVERNMENTAL DECISION?

As a member of the board of directors of the Vallecitos Water District, Mr. Shell is a public official under the Act. (Section 82048.) Consequently, he may not make, participate in making, or otherwise use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Section 87100.)

Since, as a member of the Water District board, Mr. Shell will be called upon to consider issues about service to portions of cities and unincorporated areas, and agreements with or payments to the Buena Sanitation District, he would be making, participating in making, or otherwise using his official position to influence a governmental decision.

STEP 3: DOES MR. SHELL HAVE A POTENTIALLY DISQUALIFYING ECONOMIC INTEREST?

A public official has a financial interest in a decision within the meaning of section 87103 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any one of five enumerated economic interests.

Regardless of the source of income economic interest, a public official may have a financial interest in a decision if it reasonably foreseeable that the decision will have a material financial effect on the official or a member of his or her immediate family. A governmental decision will have an effect on this economic interest if the decision will result in the personal expenses, income, assets or liabilities of the official or his or her immediate family increasing or decreasing. (Regulation 18703.5.)

In addition, under section 87103, the economic interest pertinent to your questions is:

(c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

Under the facts provided, you have a source of income economic interest with the City of Vista as an employee of the City of Vista. However, section 82030(b)(2) exempts certain types of income from the economic interest rule:

“(2) Salary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.”

Because the salary from the City of Vista is exempted as an economic interest, Vista is not considered a source of income, and we need not further analyze effects on the city.

However, the following steps analyze whether it is **reasonably foreseeable** that Mr. Shell’s decisions on the Vallecitos board will have a **material financial effect** on his personal finances, or those of members of his immediate family, and if so, whether any exceptions in the law would allow him to make such decisions anyway.

STEP 4: IS THE FINANCIAL INTEREST DIRECTLY OR INDIRECTLY INVOLVED IN THE GOVERNMENTAL DECISION?

It must be determined whether the official's financial interest is directly involved or indirectly involved in the governmental decision before applying materiality standards. (Regulation 18704(a)):

Under Regulation 18704.5(a), a public official or his or her immediate family are deemed to be directly involved in a governmental decision which has any financial effect on his or her personal finances or those of his or her immediate family.

STEP 5: WHAT IS THE APPLICABLE MATERIALITY STANDARD?

To determine whether a decision will have a material financial effect on the personal finances of a public official or his or her immediate family, use regulation 18705.5(b), which states in pertinent part:

“The financial effects of a decision which affects only the salary, per diem, or reimbursement for expenses the public official or a member of his or her immediate family receives from a federal, state, or local government agency shall not be deemed material, unless the decision is to hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action with financial sanction against the official or a member of his or her immediate family, or to set a salary for the official or a member of his or her immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position.”

STEP 6: REASONABLY FORESEEABLE

Once the applicable materiality standard has been applied, the next step is to determine if it is reasonably foreseeable that the financial effect of the governmental decision will meet that materiality standard for the economic interest involved. (Regulation 18706(a).)

Nothing in the facts you provided suggests that voting on agreements with or payments to the Buena district will foreseeably affect your personal finances or those of your immediate family.

STEPS 7 & 8: EXCEPTIONS FOR PUBLIC GENERALLY AND LEGAL PARTICIPATION

If the public official's economic interest will be foreseeably materially affected under Step 6, but a significant segment of the public generally will be affected in the

same manner, the public official may make, participate in making or influence the government decision. (Regulation 18707.)

Further, in rare cases and with strict disclosure limitations, a public official may make a decision materially affecting his or her financial interest if there exist no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision. (Regulation 18708.) This “Legally Required Participation” exception is very fact specific. Your facts do not suggest either of these exceptions apply.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: Gail Maiorana
Intern, Legal Division

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